UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

SCHOOL LANE HOUSE PHILADELPHIA, LLC and **SCHOOL LANE HOUSE GENERAL, LLC** and **RAIT SLH, L.P.** and **MICHAEL AXELROD** Plaintiffs, -against- **RAIT PARTNERSHIP, L.P.** and **RAIT GENERAL, INC.** and **RAIT INVESTMENT TRUST** and **BRANDYWINE CONSTRUCTION AND MANAGEMENT, INC.** and **MARK BERMAN** and **FEDERAL NATIONAL MORTGAGE ASSOCIATION** and **CAPRI CAPITAL FINANCE, LLC** Defendants.	Civil Action No. 04-CV_____

COMPLAINT

Plaintiffs School Lane House Philadelphia, LLC ("SLH"), School Lane House General, LLC ("SLH General"), RAIT SLH, L.P. ("RAIT SLH") and Michael Axelrod ("Axelrod"), by and through their undersigned attorneys, for their Complaint against Defendants RAIT Partnership, L.P. (the "Partnership"), RAIT Investment Trust (the "Trust"), RAIT General, Inc. (the "Corporation"), Brandywine Construction and Management, Inc. ("Brandywine"), Mark

Berman ("Berman"), Capri Capital Finance, LLC ("Capri"), and Federal National Mortgage Association ("Fannie Mae"), allege as follows:

INTRODUCTION

1. This action seeks to undo, and obtain compensation for, the brazen fraud of the Defendants (other than Fannie Mae and Capri), by which they induced Plaintiffs into purchasing a majority interest in a large residential apartment complex in the northwestern part of Philadelphia. The fraud consisted of affirmative misrepresentations about and continuous active concealment of the true physical condition of the property and financial condition of its operations, and even included deliberately inducing third-parties to make knowingly false statements, all with the specific purpose of misleading Plaintiffs, Fannie Mae and Capri into entering into the transaction. As a direct result, Plaintiffs have not gotten the benefit of their bargain and have further suffered substantial out-of-pocket losses, which can only be fully remedied by complete rescission and damages, including punitive damages for Defendants' (other than Fannie Mae and Capri) deliberately fraudulent conduct.

PARTIES

2. Plaintiff School Lane House Philadelphia, LLC ("SLH") is a Delaware Limited Liability company with offices at 400 Post Avenue, Westbury, New York 11590. SLH currently owns 88% of the limited partnership interest of RAIT SLH, L.P.

3. Plaintiff School Lane House General, LLC ("SLH General") is a Delaware Limited Liability company with offices at 400 Post Avenue, Westbury, NY 11590. SLH General currently owns 1% of the limited partnership interests of RAIT SLH, L.P., and is currently the general partner of RAIT SLH, L.P.

4. Plaintiff RAIT SLH, L.P. ("RAIT SLH") is a Pennsylvania limited partnership with offices at 5450 Wissahickon Avenue, Philadelphia, PA. RAIT SLH is the fee owner of a residential apartment building complex known as School Lane House Apartments, located at 5450 Wissahickon Avenue, City and County of Philadelphia, Pennsylvania (the "Property").

5. Plaintiff Michael Axelrod ("Axelrod") is a natural person and citizen of the State of New York, with an address at 43 Meadow Drive, Quogue, NY 11959. He is a principal of SLH and of SLH General, and is a "Key Principal" as set forth and defined in the agreements by which SLH and General purchased their interests in RAIT SLH, and RAIT SLH executed a mortgage note and third mortgage on the Property. Axelrod is a party to these agreements, with rights and obligations thereunder.

6. Defendant RAIT Partnership, L.P. ("Partnership") is a Delaware limited partnership with an address at 1818 Market Street, 28th Floor, Philadelphia, PA 19103. Partnership is the former owner of 99% of the limited partnership interests in RAIT SLH, and currently owns approximately 11% of the limited partnership interests in RAIT SLH, having sold its remaining 88% interest to SLH.

7. Defendant RAIT General, Inc. (the "Corporation") is a Delaware Corporation with an address at 1818 Market Street, 28th Floor, Philadelphia, PA 19103. The Corporation is the general partner of Partnership.

8. Defendant RAIT Investment Trust ("Trust") is a business trust with offices at 1818 Market Street, 28th Floor, Philadelphia, PA 19103. Trust owns and controls all or nearly all of the Limited Partnership interests of Partnership, and all or nearly all of the stock of the Corporation; and as a result thereof, Trust controls Partnership.

9. Defendant Brandywine Construction & Management, Inc. ("Brandywine") is a [Pennsylvania / Delaware] corporation with its address at 1521 Locust Street, Philadelphia, PA 19102. Brandywine was at relevant times the manager of the Property, until approximately January 2004. Brandywine is not independent, but manages only properties which are owned (whether directly or indirectly) by Trust or its controlling principals. At all relevant times, Brandywine was an agent of, and acted on behalf of, Trust, Partnership, and the Corporation.

10. Trust, Partnership, the Corporation, and Brandywine are all owned and controlled by a common ownership, and the four entities constitute an association-in-fact enterprise under common ownership and control.

11. Defendant Mark Berman ("Berman") is a natural person and, upon information and belief, a citizen of the Commonwealth of Pennsylvania, with an address at 1521 Locust Street, Philadelphia, PA 19102. Berman is an employee and, upon information and belief, an officer of Brandywine, acting on his own behalf and on behalf of Brandywine, in agreement with and to further the interests of, the foregoing Defendants, with respect to the actions and transactions set forth below.

12. Trust, Partnership, the Corporation, Brandywine and Berman are referred to hereinbelow as the "RAIT Defendants". Prior to the closing of the Purchase and Sale transactions set forth below, RAIT SLH, L.P. was an enterprise operated by the RAIT Defendants.

13. Defendant Capri Capital Finance, LLC ("Capri"), is a Delaware limited liability company, with its principal place of business at 1655 North Fort Myer Drive, 13th Floor, Arlington, VA 22209.

14. Defendant Federal National Mortgage Association, commonly known, and referred to herein, as "Fannie Mae", is a privately-held, publicly-traded stock corporation created and organized under the laws of the United States of America, with its principal place of business in Washington, D.C.

15. No wrongdoing is alleged against Capri or Fannie Mae herein. Rather, Capri and Fannie Mae are also victims of the RAIT Defendants' fraudulent scheme alleged hereinbelow. Capri and Fannie Mae are made party-defendants solely because Capri provided financing for the transaction and took a third mortgage on the Property, and then sold and assigned the note and mortgage to Fannie Mae, which is now the mortgagee with interests in the Property which is the subject of this action; so that the rights of both Capri and Fannie Mae may be affected by the relief sought herein.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331, 12 U.S.C. §1723a, and American Red Cross v. S.G. & A.E., 505 U.S. 247 (1992).

17. Venue is proper in this District because (*i*) all Defendants are located and/or regularly doing business in this District, (*ii*) the Property which constitutes a major part of the subject matter of this Action is located in this District, and (*iii*) most of the activities and transactions giving rise to this action took place or occurred in this District.

FACTS COMMON TO ALL COUNTS

18. Plaintiff Axelrod is an investor with a number of long-term investments primarily in commercial real estate in Philadelphia and New York.

19. Defendants Trust, Partnership and the Corporation are in the business, *inter alia*, of (*i*) making high-interest bridge loans to finance the purchase of real estate, and (*ii*)

purchasing troubled real estate at distress value, making certain repairs and/or renovations, and then selling it at a profit. Prior to December 20, 2002, Partnership owned 99% of the limited partnership interests in RAIT SLH, and the Corporation owned the remaining 1% and was RAIT SLH's general partner.

20. On or about September 30, 1999, Trust, the Partnership and the Corporation caused RAIT SLH to purchase at foreclosure sale the residential apartment complex known as School Lane House, 5450 Wissahickon Avenue, Philadelphia, PA, and referred to herein as the Property.

21. Some time in early or mid- 2002, the RAIT Defendants estimated the Property to be worth approximately $25 million, subject to two mortgages held by Fannie Mae, the first in the original principal amount of $15,000,000.00, and the second in the original principal amount of $2,275,000.00, for an equity value of approximately $8 million.

22. At this time, the RAIT Defendants knew that the Property had numerous serious problems that could not be ignored much longer but would likely require several million dollars to repair. Included among the obvious such items were various leaks and superficial damage, as well as the sorry state of the lobby. Among the non-obvious items were the facts that the boilers and the elevators had been poorly maintained and needed either major repairs or replacement.

23. The RAIT Defendants accordingly agreed among themselves and embarked upon a conspiracy and scheme to fraudulently induce Plaintiffs to purchase the major interest in the Property, by falsely representing, and concealing, the true condition of the Property and its various structural and operating systems. In doing so, the RAIT Defendants also defrauded Capri and Fannie Mae, by fraudulently inducing Capri and Fannie Mae, by the same misrepresentations and concealment, into providing financing for the sale and taking a third

mortgage on the Property (which note and mortgage Capri has since sold and assigned to Fannie Mae).

24. Scott Schaeffer, president of Partnership and Corporation, contacted the broker of Plaintiff Axelrod, to try to interest Axelrod, with whom the principals of the RAIT Defendants were already familiar, in purchasing the Property.

25. Axelrod met with Schaeffer at the RAIT Defendants' Center City offices in June 2002. At that meeting, Schaeffer, acting on behalf of the RAIT Defendants, made a presentation in which he represented that the Property was in good financial and physical condition, that the occupancy rate was very high, and that income exceeded expenditures.

26. Schaeffer and the RAIT Defendants knew these statements to be false.

27. Axelrod was not interested in the Property unless the RAIT Defendants agreed to undertake certain obviously-needed repairs and renovations, including the complete renovation of the lobby, and provide a reserve fund.

28. At first, the RAIT Defendants pursued another prospective purchaser. However, in late 2002, the RAIT Defendants decided not to pursue that potential deal.

29. Still eager to sell the Property, the RAIT Defendants re-contacted Axelrod, and agreed to his conditions. However, they continued to misrepresent, and conceal, the true condition of the boilers, the elevators, and other aspects of the Property.

30. Berman, acting on behalf of the other RAIT Defendants, then took Axelrod on a tour of the building. Berman repeatedly represented how well-maintained and well-run the building was. Berman specifically represented that the boilers, HVAC, roof and elevators were well-maintained and in excellent condition.

31. Berman and the other RAIT Defendants knew these statements to be false.

32. The sale of the Property was structured as the sale of a 89% interest in RAIT SLH, which remained the title owner of the Property. The Partnership agreed to sell an 88% interest to Plaintiff School Lane House Philadelphia, leaving the Partnership with a 11% interest. The Corporation agreed to sell its 1% interest to School Lane House General, which became the General Partner of RAIT SLH.

33. The transaction proceeded in two steps, with a first stage closing on or about December 20, 2002, and a second stage closing on or about April 1, 2003.

34. In the first stage closing, the Partnership transferred a 49% interest in RAIT SLH, in exchange for a payment of approximately $4,133,000. The remaining interests were transferred at the second stage closing, in exchange for payment to the Partnership of proceeds of a loan from Capri Capital Finance, LLC ("Capri") to RAIT SLH in the amount of $1,851,000 (the "Third Mortgage Loan").

35. The Third Mortgage Loan was made initially by Capri, under an arrangement with Fannie Mae. Pursuant to the understanding and intention of all parties hereto, the mortgage and mortgage note ("Multi-Family Note") were then sold and assigned by Capri to Fannie Mae, which is now the note-holder and mortgagee.

36. Because the RAIT Defendants wanted the first stage closing before the end of 2002, Axelrod pointed out that there was not sufficient time to obtain all reports and surveys of the physical condition of the Property as part of his due diligence.

37. The RAIT Defendants represented to Axelrod that they had or could quickly get reports that he could rely upon.

38. Accordingly, prior to the first stage closing, the RAIT Defendants obtained and forwarded to Axelrod a Property Condition Assessment by Hillman Environmental Group, LLC,

dated December 6, 2002 (the "Hillman Report"). The RAIT Defendants did so intending that Axelrod, SLH and SLH General would rely on the Hillman Report and the statements made therein, and to induce Axelrod, SLH and SLH General to go forward with the transaction and purchase 89% of RAIT SLH.

39. The RAIT Defendants also forwarded the Hillman Report to Capri, with the intention that Capri and Fannie Mae would rely on it and the statements made therein, and to induce them to make the third mortgage loan.

40. According to the Hillman Report (at section 2.5.1), Management (Brandywine) represented that that the boilers had been installed ten years earlier. The Hillman Report also stated that the "HVAC systems and equipment appeared to be in fair condition." A copy of the Hillman Report is Exhibit A hereto.

41. Because of Hillman Environmental Group's engineer's inability to see inside the boilers themselves, the Report recommends that "Management should have the mechanical contractor which services the boiler provide an evaluation of the existing boiler plant and boiler room …"

42. The RAIT Defendants accordingly obtained from Industrial Boiler, Inc. and provided to Plaintiffs and, upon information and belief, to Capri and/or Fannie Mae, a letter making the following representations:

> "On the condition of the boilers and piping in the boiler room … after opening the boilers for cleaning and inspection this past season … the boilers are in *remarkably good condition internally and externally*. The waterside of the boilers have been well maintained and the tubes and tube sheets should go several more years with the same regular maintenance program that has been kept up until now. *The burners are in excellent shape and should not give any problems* other than normal working related problems. Most of the controls have already been updated to maintain trouble free operation.

> The piping and valves in the boiler room are all in good shape and with proper regular maintenance all should last during normal operating conditions. After checking supply and return piping running thru-out the building all show normal wear and are in good condition. The system works well including the condensate tank and pumps. *I don't foresee any problems other than normal wear and tear, the system has been well maintained and should work well for a long time to come.*" [Emphasis added]

A copy of this letter is Exhibit B hereto.

43. The RAIT Defendants forwarded this letter to Plaintiffs and to Capri Capital and/or Fannie Mae intending that they rely on its representations, and to induce them into entering into the transaction.

44. The Hillman Report also states (at section 2.6), that:

> "Elevators were operating properly at the time of the site observation, with *no reported* or observed deficiencies noted. Current inspection certificates were not posted and should be provided. Maintenance is handled under a service agreement. *The* ***property manager reported*** *that the passenger elevators in both buildings were modernized and refurbished* prior to current management, *within the last 5 or 6 years*. The service elevators were not included in the scope of elevator renovation work. Funds are allocated for refurbishing of the service elevators during the proposed term due to normal wear and tear." [Emphasis added]

45. In paragraph 7(a)(III)(xxiii)(1) of the Purchase and Sale Agreement, the RAIT Defendants further represented that:

> "Other than as disclosed on that certain Engineering Report dated December 6, 2002 and conducted by Hillmann Group, LLC, to the best of our knowledge, there are no material defects in, mechanical failure of or damage to the Improvements, including the roof, structure, *elevators*, walls, *heating*, ventilation, air conditioning, plumbing, electrical, drainage, fire alarm, communications, sprinkler, security and exhaust systems and their component parts, or other improvements on or forming a part of the Property, all of which, to the best of our knowledge, have been constructed in a good and workerlike manner consistent with generally accepted practices for first-class construction. The Personalty is generally in good operating condition." [Emphasis added]

A copy of the Purchase and Sale Agreement is Exhibit C hereto.

46. The statements made in the letter and the representations made in the Purchase and Sale Agreement with respect to the boiler system were false at the time they were made.

47. The RAIT Defendants knew at the time they forwarded the letter that the statements in it were false, and forwarded the letter intending to deceive Plaintiffs and Capri Capital and Fannie Mae, and induce them into entering into the transaction.

48. The RAIT Defendants knew at the time they executed the Purchase and Sale Agreement that the representations therein with respect to the boiler system were false, and made those representations deliberately to deceive Plaintiffs and Capri Capital and Fannie Mae, and induce them into entering into the transaction.

49. In fact, the RAIT Defendants had been informed by Industrial Boiler, and therefore knew at the time, that the boilers had not been adequately maintained and that the system was inadequate to the needs of the building and there were multiple problems that needed to be addressed.

50. Nevertheless, despite having been informed of this, in order to conceal the true condition of the boiler system and to deceive Plaintiffs and Fannie Mae, Mark Berman, acting on behalf of the RAIT Defendants and with their knowledge, instructed Industrial Boiler to write the letter making the false statements about the boiler system so that it could be forwarded to Plaintiffs and Capri / Fannie Mae for them to rely upon.

51. Berman, on behalf of the RAIT Defendants, coerced Industrial Boiler into sending this false letter, the contents of which were dictated by Berman to Industrial Boiler, by threatening to withhold large amounts of money then owed to Industrial Boiler but which had not been paid, the loss of which might have put Industrial Boiler out of business. Attached hereto as Exhibit D is a copy of Industrial Boiler's recent explanatory letter.

52. The representations made in the Hillman Report and the Purchase and Sale Agreement with respect to the elevators were false at the time they were made.

53. The RAIT Defendants knew at the time they executed the Purchase and Sale Agreement that the representations therein with respect to the elevators were false, and made those representations deliberately to deceive Plaintiffs and Capri Capital and Fannie Mae, and induce them into entering into the transaction.

54. In fact, the RAIT Defendants had been informed by its service provider, Pincus Elevator Co, Inc., that the elevator equipment was past its useful life or obsolete and that replacement in the form of a modernization contract was necessary. Attached hereto as Exhibit E is a copy of Pincus Elevator's recent letter so stating.

55. In order to continue concealing the true facts from Plaintiffs for as long as possible, the RAIT Defendants made it a condition of the sale that Brandywine continue as the managing agent of the Property, so that Brandywine could continue to misrepresent and conceal the true state of affairs.

56. It was only after the second stage closing in April 2003 that Plaintiffs began to hear about a few relatively minor complaints from tenants. When Plaintiffs brought these to the attention of Brandywine and Berman, they were assured by these Defendants that the tenants complaints were being addressed and resolved.

57. Brandywine's and Berman's assurances that the tenants complaints were being addressed and resolved were false.

58. However, Brandywine continued to withhold information, and conceal and misrepresent the condition of the Property for as long as they remained the managing agent of the Property.

59. Accordingly, Plaintiffs remained unaware that tenants' complaints were not being resolved, and unaware of the true condition of the Property

60. The RAIT Defendants used the U.S. mails and interstate telephone lines to communicate their false and deliberately misleading representations to, and to perpetrate their fraud upon, Plaintiffs, Capri, and Fannie Mae.

61. Eventually, in about October 2003, Plaintiffs learned for the first time that Brandywine was not addressing or dealing with numerous complaints from tenants, some of whom had become so disgruntled that they began to withhold rent.

62. For this reason, Plaintiffs terminated Brandywine by letter dated October 30, 2003, giving Brandywine 90 days' notice pursuant to the management contract. During this 90 day period during which Brandywine continued to act as manager, Brandywine continued to withhold material information from Plaintiffs.

63. Accordingly, it was not until late in January 2004, that Plaintiffs began to actively manage the Property and discover the true state of affairs that the RAIT Defendants had concealed.

64. As a predictable result of the problems with the boilers and elevators, which the RAIT Defendants knew about but concealed from Plaintiffs, Capri and Fannie Mae, the Property received a number of violations from the City of Philadelphia. Because of these problems, violations and tenant complaints, the Property's reputation among residential real estate professionals and on the internet has been severely damaged, resulting in a substantially reduced occupancy rate.

65. Plaintiffs also discovered in about January 2004, that the RAIT Defendants had misrepresented the rental stream and occupancy of the Property.

66. Unknown to Plaintiffs prior to the second stage closing, in order to artificially increase the occupancy rate of the Property to make it more attractive to Plaintiffs, the RAIT Defendants had, for a period of time, offered to prospective tenants that their first month's rent would be free.

67. In addition, the RAIT Defendants did not perform the necessary credit and background checks to determine that prospective tenants were likely to be and remain financially responsible.

68. As a result of the first-month's-rent-free agreements, which were not disclosed to Plaintiffs, the cash flow and income from the Property was significantly less than the RAIT Defendants had represented to Plaintiffs.

69. As a result of the RAIT Defendants' scheme to artificially inflate the apparent occupancy rate at the Property, through the combination of the first-month's-rent-free agreements and the failure to do credit checks, a significant number of tenants were not financially responsible and defaulted on their leases.

70. As a result of these lease defaults, which would not have occurred but for the RAIT Defendants' actions intended to artificially inflate the apparent occupancy rate at the Property, RAIT SLH has been required to bring a number of legal proceedings to evict these defaulting tenants, resulting in increased vacancies at the Property along with the imposition of great cost, expense and financial loss to Plaintiffs.

71. In undertaking all of the foregoing actions, the RAIT Defendants have acted deliberately and maliciously, and in intentional disregard and violation of Plaintiffs' known rights and the RAIT Defendants' known obligations.

72. As part of the transaction and in order to induce Plaintiffs to enter into the transaction, the RAIT Defendants agreed in writing to undertake certain needed repairs and renovations, including (without limitation) replacement of doors with code-compliant fire safety doors, and replacement of the roof.

73. The RAIT Defendants have breached and failed to comply with their said agreement. In particular, but without limitation, the RAIT Defendants installed new doors that were not properly fitted and therefore not code-compliant nor fire-safe; and installed a defective roof that leaks.

74. The indebtedness represented by the Multi-Family Note is without recourse to its maker, RAIT SLH and its general partner, SLH General, except in certain circumstances specified therein at paragraph 9(b), which includes any fraud in the inducement of the indebtedness. A copy of the Multi-Family Note is Exhibit F hereto.

75. By reason of the fraud of the RAIT Defendants, RAIT SLH has been exposed to the risk of personal liability for the indebtedness.

76. Axelrod is identified in the Multi-Family Note, and signed an Acknowledgment, as a "Key Principal". As such Key Principal, Axelrod agreed to be liable for and to pay to the note-holder and mortgagee any personal liability of the Borrower pursuant to paragraph 9(b) of the Multi-Family Note.

77. By reason of the fraud of the RAIT Defendants, Axelrod has been exposed to the risk of personal liability for the indebtedness.

78. Section 17(b) of the Purchase and Sale Agreement provides that: "In the event any dispute between the parties hereto results in litigation, the prevailing party shall be reimbursed for all reasonable costs, including, but not limited to, reasonable attorneys' fees."

COUNT I: Rescission (Against All Defendants)

79. Plaintiffs repeat and re-allege paragraphs 1 – 78 *above*, as if fully set forth.

80. The RAIT Defendants fraudulently induced Plaintiffs, Capri and Fannie Mae into entering into the Purchase and Sale and Third Mortgage transactions, by deliberately and knowingly misrepresenting and concealing material facts about the Property, with the intention that Plaintiffs, Capri and Fannie Mae thereby be misled into entering into the transactions.

81. Had Plaintiffs known the true facts, they would not have entered into the Purchase and Sale Agreement nor executed any of the related documents; would not have participated in the first stage and second stage closings; and, in short, would not have purchased a 90% interest in the Property nor agreed to the Third Mortgage.

82. By reason of the fact that these transactions were fraudulently induced by the RAIT Defendants, Plaintiffs are entitled to have them rescinded and nullified in their entirety, and all the parties hereto be returned to their *status quo ante* December 20, 2002.

WHEREFORE, Plaintiffs pray entry of Judgment

A. declaring that the transactions evidenced and referred to in the Purchase and Sale Agreement and the Multifamily Note and in all other documents executed at the first stage and second stage closing, are rescinded and nullified in their entirety, and all the parties hereto are returned to their *status quo ante* December 20, 2002;

B. Declaring that the RAIT Defendants are alone responsible to Fannie Mae for the Indebtedness represented by the Multifamily Note and the Third Mortgage;

C. Awarding to Plaintiffs against the RAIT Defendants such sums as are necessary to compensate Plaintiffs for their losses and return them to the *status quo ante* December 20, 2003; and

D. Awarding to Plaintiffs against the RAIT Defendants punitive damages and Plaintiffs' expenses, including attorneys' fees, of this action.

COUNT II: Rescission (Against All Defendants)

83. Plaintiffs repeat and re-allege paragraphs 1 – 82 *above*, as if fully set forth.

84. By reason of the RAIT Defendants' fraudulent misrepresentations and concealment, Plaintiffs' purchase of a 90% interest in the Property, and all the transactions related thereto, have failed of consideration and failed of their essential purpose.

WHEREFORE, Plaintiffs pray entry of Judgment

A. declaring that the transactions evidenced and referred to in the Purchase and Sale Agreement and the Multifamily Note and in all other documents executed at the first stage and second stage closing, are rescinded and nullified in their entirety, and all the parties hereto are returned to their *status quo ante* December 20, 2002;

B. Declaring that the RAIT Defendants are alone responsible to Fannie Mae for the Indebtedness represented by the Multifamily Note and the Third Mortgage;

C. Awarding to Plaintiffs against the RAIT Defendants such sums as are necessary to compensate Plaintiffs for their losses and return them to the *status quo ante* December 20, 2003; and

D. Awarding to Plaintiffs against the RAIT Defendants Plaintiffs' expenses, including attorneys' fees, of this action.

COUNT III: Rescission (Against All Defendants)

85. Plaintiffs repeat and re-allege paragraphs 1 – 84 *above*, as if fully set forth.

86. The falseness of the representations and warranties set forth in paragraph 7(a) of the Purchase and Sale Agreement constitutes a material breach of that Agreement.

87. The failure of the RAIT Defendants to properly replace the doors and the roof as agreed constitutes an additional material breach of the Agreement.

88. By reason of the RAIT Defendants' material breach, Plaintiffs are entitled to rescind the Purchase and Sale and all related transactions.

WHEREFORE, Plaintiffs pray entry of Judgment

A. declaring that the transactions evidenced and referred to in the Purchase and Sale Agreement and the Multifamily Note and in all other documents executed at the first stage and second stage closing, are rescinded and nullified in their entirety, and all the parties hereto are returned to their *status quo ante* December 20, 2002;

B. Declaring that the RAIT Defendants are alone responsible to Fannie Mae for the Indebtedness represented by the Multifamily Note and the Third Mortgage;

C. Awarding to Plaintiffs against the RAIT Defendants such sums as are necessary to compensate Plaintiffs for their losses and return them to the *status quo ante* December 20, 2003; and

D. Awarding to Plaintiffs against the RAIT Defendants Plaintiffs' expenses, including attorneys' fees, of this action.

COUNT IV: Damages For Fraud (RAIT Defendants)

89. Plaintiffs repeat and re-allege paragraphs 1 – 88 *above*, as if fully set forth.

90. As a proximate result of the fraud committed by the RAIT Defendants, Plaintiffs have been forced to incur significant expenses, and have lost significant income and value, in an amount to be determined at trial but believed to exceed $2 million.

WHEREFORE, Plaintiffs pray Judgment be entered against the RAIT Defendants in an amount necessary to compensate them for their damages caused by the RAIT Defendants' fraud, together with punitive damages, plus Plaintiffs' expenses, including attorneys' fees, of this action.

COUNT V: Damages For Breach of Contract
(RAIT Partnership L.P. and RAIT General, Inc.)

91. Plaintiffs repeat and re-allege paragraphs 1 – 89 *above*, as if fully set forth.

92. The falseness of the representations and warranties set forth in paragraph 7(a) of the Purchase and Sale Agreement constitutes a material breach of that Agreement.

93. As a proximate result of the breach of the Purchase and Sale Agreement, Plaintiffs have been forced to incur significant expenses, and have lost significant income and value, in an amount to be determined at trial, but believed to exceed $2 million.

94. As a proximate result of the breach of the Purchase and Sale Agreement by reason of their faulty and defective installation of non-code-compliant doors and a leaky and otherwise defective roof, Plaintiffs have been forced to incur significant additional expenses, and have lost significant income and value, in an amount to be determined at trial.

WHEREFORE, Plaintiffs pray Judgment be entered against the RAIT Partnership, L.P. and RAIT General, Inc., in an amount necessary to compensate them for their damages caused by the RAIT Defendants' breach of contract, plus Plaintiffs' expenses, including attorneys' fees, of this action.

COUNT VI: Specific Performance and Declaration
(Against RAIT Partnership L.P., RAIT General, Inc., and Fannie Mae)

95. Plaintiffs repeat and re-allege paragraphs 1 – 94 *above*, as if fully set forth.

96. Section 11 of the Purchase and Sale Agreement requires Seller to indemnify and hold Purchaser harmless, as follows:

> "...(a) Seller shall hold harmless, indemnify and defend Purchaser, its successors and assigns and their respective agents, employees, officers, trustees, partners and members from and against any and all *obligations, liabilities, claims,* liens, encumbrances, *demands, losses*, damages, causes of action, judgments, costs and expenses (including attorneys' fees), and any interest and penalties assessed by any regulatory or Governmental Entity whether direct, contingent or consequential *and no matter how arising* (the foregoing provisions of Paragraph 11(a) being hereinafter referred to individually and collectively as "Losses and Liabilities") (i) *in any way related to the Seller, the Partnership, the Property or its management and operations by the Seller, and arising or accruing out of events or circumstances occurring prior* to the First Stage Closing." [Italics added]

97. RAIT SLH's potential recourse liability to Fannie Mae, and Axelrod's potential liability to Fannie Mae as a Key Principal, are "obligations, liabilities, claims, ... demands ...", *etc.*, which are "related to the Seller, the Partnership, the Property or its

management and operations by the Seller," and which resulted from their actions and activities prior to the date of the Purchase and Sale Agreement.

98. By reason of the foregoing, the Partnership and the Corporation, as Seller, are unconditionally obligated to indemnify, hold harmless, and defend Axelrod and RAIT SLH from and against any and all claims and demands that Fannie Mae may make to them.

99. By reason of the foregoing and of its several breaches and fraud as alleged hereinabove, Axelrod and RAIT SLH are entitled to a judgment declaring that Partnership and Corporation are responsible for any recourse and Key Principal liability under the Multi-Family Note and its related documents, and that Axelrod and RAIT SLH are not so liable.

WHEREFORE, Axelrod and RAIT SLH pray for Judgment against RAIT Partnership, L.P., RAIT General, Inc., and Fannie Mae:

A. declaring that Partnership and Corporation are responsible for any recourse and Key Principal liability under the Multifamily Note and its related documents;

B. Declaring that the Axelrod and RAIT SLH have no responsibility or liability to Fannie Mae for any recourse liability; and

C. Awarding to Plaintiffs against the RAIT Defendants Plaintiffs' expenses, including attorneys' fees, of this action.

COUNT VII: Indemnity (Against RAIT Partnership L.P. and RAIT General, Inc.)

100. Plaintiffs repeat and re-allege paragraphs 1 – 99 *above*, as if fully set forth.

101. By reason of the indemnity obligation set forth in section 11 and *quoted* in paragraph 96 *above*, the Partnership and the Corporation are obligated to reimburse Plaintiffs for all expenses and damages incurred by them, no matter how arising, in any way related to the Seller, the Partnership, the Property or its management and operations by the Seller, and arising or accruing out of events or circumstances occurring prior to December 20, 2002.

WHEREFORE, Plaintiffs pray Judgment be entered against the RAIT Partnership, L.P. and RAIT General, Inc., in an amount necessary to indemnify them for their expenses, damages and losses, caused or arising out of any conduct relating to the management or operations of the Property prior to December 20, 2002, plus Plaintiffs' expenses, including attorneys' fees, of this action.

COUNT VIII: Specific Performance and Declaration
(Against RAIT Investment Trust and Fannie Mae)

102. Plaintiffs repeat and re-allege paragraphs 1 – 101 *above*, as if fully set forth.

103. At the second stage closing, in order to induce Plaintiffs to execute the Multi-Family Note and third Mortgage, and to induce Axelrod to agree to undertake responsibility as a Key Principal, Defendant RAIT Investment Trust agreed to indemnify and hold harmless Axelrod from any obligations, liabilities or other claims by Lender, as follows:

> "1. RAIT [Investment Trust] shall hold harmless, indemnify and defend Axelrod from and against any and all obligations, liabilities, claims, liens, encumbrances, demands, losses, damages, causes of action, judgments, costs and expenses (including reasonable attorneys' fees) whether direct, contingent or consequential and no matter how arising ("Losses and Liabilities") arising out of the fraud or written material misrepresentation by Maker, RAIT or any officer, director, partner, member or employee of Maker in connection with the application for or creation of the Indebtedness (as defined in the Notes) or any request for any action or consent by Lender, by Maker or RAIT prior to the date hereof."

A copy of the Trust's Indemnification Agreement dated March 28, 2003, is Exhibit G hereto.

104. As referred to in the foregoing Indemnification Agreement, "Maker" refers to RAIT SLH, L.P., then owned, controlled and operated by the Partnership, Corporation and Trust. "Lender" refers to Fannie Mae.

105. By reason of the fraud and written material misrepresentations of the then-partners, officers and agents of Maker alleged hereinabove, the Trust is unconditionally obligated

to indemnify, hold harmless, and defend Axelrod from and against any and all claims and demands that Fannie Mae may make to him.

106. By reason of the foregoing, Axelrod is entitled to a judgment declaring that the Trust is responsible for any Key Principal liability under the Multifamily Note and its related documents, and that Axelrod is not so liable.

WHEREFORE, Axelrod prays for Judgment against RAIT Investment Trust and Fannie Mae:

A. declaring that the Trust is responsible for any Key Principal liability under the Multifamily Note and its related documents;

B. Declaring that the Axelrod has no responsibility or liability to Fannie Mae for any Key Principal liability; and

C. Awarding to Plaintiffs against the RAIT Defendants Plaintiffs' expenses, including attorneys' fees, of this action.

COUNT IX: Conspiracy (Against RAIT Defendants)

107. Plaintiffs repeat and re-allege paragraphs 1 – 106 *above*, as if fully set forth.

108. At all times relevant herein, each of the RAIT Defendants acted pursuant to and in furtherance of an agreement and conspiracy among and between them, the purpose of which was to fraudulently induce Axelrod and his companies to purchase the 90% interest in the Property, and to fraudulently induce Capri and Fannie Mae to fund the third mortgage loan, through willful material misrepresentations concerning, and concealment of, the true state and condition of the Property and its various systems, including (without limitation) the elevators and the boilers.

109. By reason of their conspiracy, each of the acts of each of the RAIT Defendants alleged hereinabove is attributable to all of the other RAIT Defendants, and they are all of them responsible and liable for the acts of any one of them in furtherance of the conspiracy.

WHEREFORE, Plaintiffs pray Judgment be entered against each and all of the RAIT Defendants in an amount necessary to compensate Plaintiffs for their damages and losses resulting from the actions taken in furtherance of the RAIT Defendants' conspiracy, together with punitive damages, plus Plaintiffs' expenses, including attorneys' fees, of this action.

Respectfully submitted,

SPECTOR GADON & ROSEN

Dated: August 11, 2004

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